

that the vehicles, as originally manufactured, meet the requirements of this standard. Lamborghini countered that the vehicles do not conform and contended that modifications were needed to the fuel filler neck and gas tank to bring the vehicles into compliance with this standard as well as FMVSS Nos. 214 (as noted above).

*Agency Analysis:* NHTSA concluded that non-U.S. certified Lamborghini Diablo passenger cars modified as described by Lamborghini will meet the requirements of FMVSS No. 301. The agency further notes that those modifications would not preclude the vehicles from being deemed eligible for importation. Conformity packages submitted for vehicles imported under the decision must demonstrate that the vehicle is equipped with components that allow it to achieve compliance with the standard.

(e) 49 CFR Part 581 Bumper Standard: NCDL stated in the petition that U.S.-model bumper supports must be installed in the vehicles to meet the requirements of this standard. Lamborghini countered that Bumper Standard compliance issues are irrelevant to whether a vehicle can be deemed eligible for importation, as that decision must be predicated on the vehicle's capability of being modified to conform to the FMVSS alone, and the Bumper Standard is not an FMVSS.

*Agency Analysis:* The agency agrees with Lamborghini that Bumper Standard compliance issues are not relevant to an import eligibility decision for the reasons given. The agency observes, however, that because a vehicle that is not originally manufactured to comply with the Bumper Standard must be modified to comply with the standard before it can be admitted permanently into the United States, conformance with the Bumper Standard must be shown in the conformity package submitted to NHTSA to allow release of the DOT conformance bond furnished at the time of vehicle importation.

#### Conclusion

In view of the above considerations, NHTSA decided to grant the petition.

#### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP-416 is the vehicle eligibility number assigned to the 1996 Lamborghini Diablo Coupe and Roadster and the 1997 Roadster, and

VCP-26 is the vehicle eligibility number assigned to the 1997 Lamborghini Diablo Coupe admissible under this notice of final decision.

#### Final Decision

Accordingly, on the basis of the foregoing, NHTSA decided that 1996 Lamborghini Diablo Coupe and Roadster passenger cars and 1997 Lamborghini Diablo Roadster passenger cars that were not originally manufactured to comply with all applicable FMVSS, are substantially similar to 1996 Lamborghini Diablo Coupe and Roadster passenger cars and 1997 Lamborghini Roadster passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS. In addition, the agency decided that 1997 Lamborghini Diablo Coupe passenger cars that were not originally manufactured to comply with all applicable FMVSS are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 26, 2006.

**Jeffrey Giuseppe,**

*Acting Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket Nos. NHTSA-2003-15470 and NHTSA-2003-16031]

#### Denial of Petitions for Import Eligibility for Nonconforming 2001-2002 Mitsubishi Evolution VII and 2003 Mitsubishi Evolution VIII Left Hand Drive Passenger Cars

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Denial of Petitions for Import Eligibility for nonconforming 2001-2002 Mitsubishi Evolution VII and 2003 Mitsubishi Evolution VIII left hand drive passenger cars.

**SUMMARY:** This document sets forth the reasons for denial of two petitions submitted to the National Highway Traffic Safety Administration (NHTSA) requesting the agency to decide that left-hand drive (LHD) 2001-2002 Mitsubishi

Evolution VII and 2003 Mitsubishi Evolution VIII LHD passenger cars that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States. The petitions contended that 2001-2002 Mitsubishi Evolution VII LHD passenger cars are eligible for importation because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS, and that 2003 Mitsubishi Evolution VIII LHD passenger cars are eligible for importation because they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified as complying with the safety standards (the U.S.-certified version of 2003 Mitsubishi Evolution VIII LHD passenger cars), and are capable of being readily altered to conform to those standards.

**DATES:** These denials were effective December 21, 2004. The agency notified the petitioner at that time that the subject petitions were being denied under 49 CFR 593.7(e).

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202-366-3151).

#### SUPPLEMENTARY INFORMATION:

#### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence that NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register**

of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

On February 10, 2003, G&K Automotive Conversion, Inc., of Santa Ana, California (G&K) (Registered Importer 90-007) petitioned the agency to decide that 2001-2002 Mitsubishi Evolution VII LHD passenger cars are eligible for importation. On April 14, 2003, G&K petitioned NHTSA to decide that 2003 Mitsubishi Evolution VIII LHD passenger cars are eligible for importation. NHTSA published a notice of the petition for the 2003 Mitsubishi Evolution VIII LHD passenger cars on June 30, 2003 (68 FR 38750) and a notice of the petition for the 2001-2002 Mitsubishi Evolution VII LHD passenger cars on September 3, 2003 (68 FR 52454). The notices thoroughly described the petitions and solicited public comments thereon. The agency received two comments in response to the notices. The first of these was from an anonymous source. The anonymous commenter expressed the belief that the petition for the 2003 Mitsubishi Evolution VIII LHD passenger cars was defective in that it did not remotely demonstrate that the non-U.S. certified vehicles were substantially similar to any U.S. certified vehicles, and that the petition should therefore be denied.

The second comment was from Mitsubishi Motors North America, Inc. (Mitsubishi), the U.S. representative of the vehicles' original manufacturer. In its comments, Mitsubishi raised issues concerning the basis for both petitions, and identified details it contended G&K had overlooked in describing alterations needed to conform the vehicles to certain of the FMVSS. The agency accorded G&K an opportunity to respond to Mitsubishi's comments, and also asked G&K to provide additional data, views, and arguments with regard to certain issues raised in the petitions. After G&K responded, the agency gave Mitsubishi an opportunity to rebut those responses. Mitsubishi requested, and was granted, confidentially under 49 CFR part 512 with regard to certain information that it submitted as part of its comments. The comments, responses, and rebuttals are summarized below, together with NHTSA's analysis of each matter at issue.

### **1. Attempted Reliance on Eligibility Decision Covering 2003 Mitsubishi Evolution VIII Passenger Cars To Establish Eligibility for 2001 and 2002 Mitsubishi Evolution VII LHD Passenger Cars**

#### *Arguments Raised*

G&K informed NHTSA that it intended to make a showing that the Evolution VII passenger cars are eligible for importation without the need for providing crashworthiness or crash avoidance test data normally required to demonstrate eligibility under 49 U.S.C. 30141(a)(1)(B). To accomplish this, G&K stated that it would first show that the Evolution VIII passenger cars are eligible for importation through a petition filed under 49 U.S.C. 30141(a)(1)(A), establishing that those vehicles are substantially similar to vehicles of the same make, model and model year that were manufactured for importation into, and sale in, the United States. G&K stated that it would then compare the Evolution VII passenger cars (which have no substantially similar U.S.-certified counterparts) to the Evolution VIII passenger cars determined eligible for importation, to establish that the Evolution VII passenger cars have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS, as is necessary to achieve import eligibility under 49 U.S.C. 30141(a)(1)(B).

#### *Agency's Analysis*

The approach proposed by G&K is similar in concept to how a vehicle can be determined eligible for importation under 49 U.S.C. 30141(a)(1)(A) based on its substantial similarity to a vehicle of the same make, model, and model year that was certified by its manufacturer as conforming to all applicable FMVSS. However, because Mitsubishi never certified model year 2001 and 2002 Evolution VII passenger cars as conforming to all applicable FMVSS, the only basis for finding non-U.S. certified versions of those vehicles eligible for importation would be under 49 U.S.C. 30141(a)(1)(B). To establish import eligibility under that section, a petitioner must demonstrate that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence that NHTSA decides to be adequate. With respect to those FMVSS for which crash testing would otherwise be required, other evidence the agency will consider may include a comparison to a vehicle that has already been determined eligible for

importation. To the extent that it is dependent on a finding that Evolution VIII passenger cars are eligible for importation, G&K's attempt to establish import eligibility for Evolution VII models cannot succeed, because, as set forth below, the agency has concluded that Evolution VIII are not eligible in their own right.

### **2. Whether the Non-U.S. Certified 2003 Evolution VIII Is Substantially Similar to the U.S.-Certified Model**

In its petition covering the 2003 Evolution VIII, G&K contended that the differences between the non-U.S. certified version of that vehicle and its U.S.-certified counterpart are mostly cosmetic. Mitsubishi disagreed. Both Mitsubishi and the anonymous commenter pointed out that the very press release announcing the introduction of the Evolution VIII into the U.S. market, which was included by G&K as attachment in support of its petition, states that there are significant structural differences between the non-U.S. certified 2003 Evolution VIII and its U.S.-certified counterpart, and further described the U.S.-certified version as having been developed exclusively for the U.S. market to meet crashworthiness and emissions requirements. Mitsubishi also stated that structural differences alone preclude a finding that the nonconforming 2003 Evolution VIII vehicles are readily capable of being altered to comply with all applicable FMVSS.

#### *Agency Analysis*

Based on its evaluation of the petition and the comments received, NHTSA concluded that there are significant structural differences between the U.S.-certified and the non-U.S. certified versions of the 2003 Evolution VIII, precluding the non-U.S. certified model from being found eligible for importation under 49 U.S.C. 30141(a)(1)(A). These differences are discussed in greater detail below with regard to FMVSS Nos. 208 and 214 compliance issues.

### **3. Issues Involving Specific Standards**

Mitsubishi made specific comments regarding the capability of the non-U.S. certified 2003 Evolution VIII passenger cars to be modified to meet the requirements of certain standards. A discussion of these comments is set forth below, in the numerical order of the standards to which the comments relate.

(a) FMVSS No. 118 Power-Operated Window, Partition, and Roof Panel Systems

The petition states that the vehicles meet the requirements of FMVSS No. 118 as originally manufactured. Mitsubishi asserted that this is incorrect, and that the power window switch, door wiring, ECU, power window regulator, and other vehicle systems must be modified or replaced to meet the requirements of the standard. G&K responded by expressing the belief that the only modification needed to conform the non-U.S. certified vehicles to the standard was to reprogram the vehicle's microprocessor-operated Simplified Wiring System (SWS). Mitsubishi countered by explaining that the SWS system in the non-U.S. certified vehicles cannot be reprogrammed to comply with the standard, and that replacement of the Electronic Time & Alarm Control System and appropriate wiring harness were required instead. G&K disputed Mitsubishi's claim that the SWS system is not programmable by citing contrary evidence that it found in an unidentified "service manual".

*Agency Analysis*

NHTSA was not persuaded by G&K's citation to the service manual that the power-operated window systems could be conformed to the standard by reprogramming alone. Instead, the agency concluded that replacement of the power window switches, power window regulators, Electronic Time & Alarm Control System and its software, and appropriate wiring harnesses would be required for the vehicles to conform to the standard.

(b) FMVSS No. 201 Occupant Protection in Interior Impact

The petition states that no structural modifications to the dash area are necessary to achieve compliance with this standard. Mitsubishi asserted that this is incorrect because there are no energy absorbing materials in the headliners of non-U.S. certified vehicles as required by the standard.

In response, G&K agreed that six pieces of energy absorbing material, which it identified by part number, would need to be installed in the headliner area to conform non-U.S. certified vehicles to the standard. Mitsubishi concurred that this modification would need to be made, but noted additional parts necessary to conform the vehicles to the standard that were omitted by G&K. Those additional parts are the headliner and center pillar upper trim. G&K stated that

it is prepared to install the readily attachable headliner pieces of energy absorbing material, if necessary to achieve conformance to the standard.

*Agency Analysis*

In view of Mitsubishi's comments and G&K's responses, NHTSA concluded that six pieces of energy absorbing material would have to be installed in the headliner area, together with the headliner itself and the center pillar upper trim, for non-U.S. certified vehicles to be brought into conformity with the standard.

(c) FMVSS No. 208 Occupant Crash Protection

The petition states that the non-U.S. certified vehicles meet the requirements of this standard as originally manufactured. Asserting that this is incorrect, Mitsubishi contended that there are differences in the body structure between U.S.-certified and non-U.S. certified Evolution VIII passenger cars that affect compliance with the standard. Mitsubishi also claimed that the non-U.S. certified vehicles are not fitted with knee protectors and have a different type of front deck cross-pipe, instrument panel undercover, and glove box, all of which have bearing on Standard 208 compliance. G&K countered by observing that three components in the area of the dashboard (the glovebox, cover dash under, and center compartment) have part numbers that are identical for both U.S.-certified and non-U.S. certified Evolution VIII passenger cars.

In response, Mitsubishi reemphasized its contention that there are significant differences between U.S.-certified and non-U.S. certified Evolution VIII passenger cars with regard to the instrument panel undercover and glove box. Mitsubishi also noted that G&K failed to address its observation that the non-U.S. certified vehicles are lacking the knee protectors that are present in the U.S.-certified vehicles.

Mitsubishi further noted that G&K failed to specify that the body structure of the U.S.-certified vehicles has to be strengthened to assure conformance with FMVSS Nos. 208 and 214. To comply with those standards, Mitsubishi contended that the U.S.-certified Evolution VIII is reinforced at the front left side member (A-pillar) by the addition of three stamped steel press plates that are not included in the body structure of the non-U.S. certified vehicle. Mitsubishi also contended that the left and right body side sills have four additional stamped steel reinforcement plates, and that both the

left and right center pillars have two additional stamped steel plates in the floorboard area, all of which affect compliance with FMVSS No. 208 and are required to achieve compliance with FMVSS No. 214.

Mitsubishi stated that the U.S.-certified vehicle also has a specially tuned ECU algorithm, because the vehicle has many reinforced components that are not included in non-U.S. certified versions of the Evolution VIII. To assure compliance with FMVSS No. 208 (as well as FMVSS No. 214), Mitsubishi postulated that G&K would have to reinforce the front left side member (A-pillar in the engine compartment area), the body side sill outer shell, as well as the inner portion of the center pillar (B-pillar). Once these reinforcements were completed, Mitsubishi contended that G&K would then have to perform technically complex ECU algorithm matching.

Mitsubishi also asserted that G&K should be required to replace each of the above-described nonconforming vehicle parts with the corresponding parts that are equipped on U.S.-certified models. Mitsubishi added that because the installation of the reinforcements detailed above requires welding and involves structural changes necessary for conformance to FMVSS Nos. 208 and 214, G&K should be required to submit test or other data to demonstrate that its welded reinforcements actually are sufficient to meet the exacting requirements of those standards. Finally, because of the critical safety implications of the complex ECU algorithm matching, Mitsubishi asserted that G&K should be required to submit test data showing that its modifications to the ECU algorithm produce a vehicle that fully complies with FMVSS No. 208.

G&K responded by simply restating that the glovebox, cover dash under, and center compartment have part numbers that are identical for both the U.S.-certified and the non-U.S. certified Evolution VIII passenger cars. G&K also cited maintenance manual diagrams and photographs that it claimed illustrate that the internal structure of the U.S.-certified and the non-U.S. certified Evolution VIII passenger cars are substantially similar.

*Agency Analysis*

NHTSA accorded G&K the opportunity to show that the body structures on the U.S.-certified and the non-U.S. certified vehicles that are pertinent to compliance with this standard are substantially similar by providing cutout sections or x-ray images for examination by NHTSA

engineers. Although it stated it would do so, G&K never provided this material to the agency. Based on its review of the manufacturer's detailed drawings of both the U.S.-certified and the non-U.S. certified versions of Evolution VIII passenger cars, NHTSA has concluded that the relevant structures of the vehicles are not substantially similar and would not perform the same in FMVSS No. 208 crashworthiness testing.

(d) FMVSS No. 209 Seat Belt Assemblies

The petition stated that the vehicles meet the requirements of FMVSS No. 209 as originally manufactured. Mitsubishi asserted that this is incorrect and that the seat belt assemblies must be replaced with components that meet the requirement of the standard. G&K responded by admitting that the seat belts in the front outboard seating positions must be replaced and that each vehicle must be inspected individually to ascertain the need for other seat belts to be replaced to achieve compliance with this standard. In its next comment, Mitsubishi agreed that the front seat belt assemblies will have to be replaced, but observed that part numbers cited by G&K do not comprise the entirety of the seat belt assemblies. Mitsubishi also contended that G&K should be required to replace the entire front seat belt assemblies to conform the non-U.S. certified vehicle to the standard. G&K responded by reiterating its plan to simply replace the front seat belt assemblies based on the part numbers assigned to those components. G&K further asserted that the three rear seat belt assemblies in the non-U.S. certified Evolution VIII passenger cars meet the requirements of FMVSS No. 209 as originally manufactured.

*Agency Analysis*

Based on the above exchange, NHTSA concluded that seat belt assembly components in all non-U.S. certified Evolution VIII passenger cars would have to be inspected, and any non-U.S.-model seat belt components would have to be replaced with U.S.-model components on vehicles not already so equipped.

(e) FMVSS No. 214 Side Impact Protection

The petition stated that the vehicles meet the requirements of FMVSS No. 214 as originally manufactured. Mitsubishi asserted that this is incorrect and that non-U.S. certified vehicles lack chest protecting energy absorbing pads in the interior door trim and do not have side impact bars specifically reinforced

to comply with the standard. G&K responded by stating that all vehicles must be inspected for the presence of U.S.-model door bars and chest protecting pads, and that vehicles without such components must have them installed to achieve compliance with this standard. Mitsubishi then observed that G&K did not identify the criteria that it will use for determining whether it is necessary to add the missing door bars. Mitsubishi also emphasized that G&K had omitted any reference to the fact that the non-conforming vehicles lack protecting pads in the rear door area and had neglected to mention any of the body structure modifications pertinent to compliance with both FMVSS Nos. 208 and 214.

Mitsubishi stated in summation that "G&K should be required to add rear door area protecting pads, and should be required to install crossbars identical to the ones in U.S.-certified Evolution VIII vehicles in all nonconforming vehicles that do not have the same crossbars as are in U.S.-certified models. In addition, because these modifications are structural and require welding—as would the modifications pertinent to both FMVSS Nos. 208 and 214 (which were discussed above in connection with FMVSS No. 208)—G&K should be required to submit test or other data that demonstrate that its modifications would meet the critical safety requirements of FMVSS No. 214."

G&K responded with the observation that NHTSA has allowed the installation of welded-in door bars in vehicles granted import eligibility under 49 U.S.C. 30141(a)(1)(A) in many instances without the need for providing crashworthiness test reports.

*Agency Analysis*

NHTSA accorded G&K the opportunity to show that the body structures on the U.S.-certified and the non-U.S. certified vehicles that are pertinent to compliance with this standard are substantially similar by providing cutout sections or x-ray images for examination by NHTSA engineers. Although it stated it would do so, G&K never provided this material to the agency. Based on its review of the manufacturer's detailed drawings of both the U.S.-certified and the non-U.S. certified versions of Evolution VIII passenger cars, NHTSA has concluded that the relevant structures of the vehicles are not substantially similar and would not perform the same in FMVSS No. 214 crashworthiness testing.

(f) FMVSS No. 225 Child Restraint Anchorage Systems

The petition stated that the vehicles must be modified to comply with the requirements of FMVSS No. 225, but provided no description of those modifications. Mitsubishi observed that by failing to provide that description, G&K had not met its burden for establishing that the vehicles are capable of being readily modified to meet the requirements of the standard.

*Agency Analysis*

G&K did not provide sufficient data, views, and arguments for NHTSA to conclude that non-U.S. certified Evolution VIII passenger cars are capable of being readily altered to conform to FMVSS No. 225.

(g) FMVSS No. 301 Fuel System Integrity

The petition stated the vehicles must be modified to comply with requirements of FMVSS No. 301, but provided no description of those modifications. Mitsubishi responded that absent such a description, G&K had not met its burden for establishing that the vehicles are capable of being readily modified to meet the requirements of the standard.

*Agency Analysis*

G&K did not provide sufficient data, views, and arguments for NHTSA to conclude that non-U.S. certified Evolution VIII passenger cars are capable of being readily altered to conform to FMVSS No. 301.

**Decision**

Based on the foregoing, NHTSA concluded that the petitions do not clearly demonstrate that the subject vehicles are eligible for importation. The petitions were accordingly denied under 49 CFR 593.7(e).

As provided in 49 CFR 593.7, NHTSA will not consider a new import eligibility petition covering the vehicles that are the subject of the petitions until at least three months from the date of this notice.

**Authority:** 49 U.S.C. 30141(a)(1) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 27, 2006.

**Jeffrey Giuseppe,**

*Acting Director, Office of Vehicle Safety Compliance.*

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